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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/966,845	09/28/2001	Barbara J. Boe	065027.0103	4972
5073	7590	10/19/2010		
BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980			EXAMINER RETTA, YEHDEGA	
			ART UNIT 3622	PAPER NUMBER
			NOTIFICATION DATE 10/19/2010	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptomail1@bakerbotts.com
glenda.orrantia@bakerbotts.com

Office Action Summary

Application No.

09/966,845

Applicant(s)

BOE ET AL.

Examiner

Yehdega Retta

Art Unit

3622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2010.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 26 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-14 and 26 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

This office action is in response to the Request for Continued Examination filed June 2, 2010. Applicant submitted a supplemental Reissue Declaration.

The supplemental declaration is defective because it fails to identify at least one error which is relied upon to support the reissue application.

Reissue oath/declaration

Claims 1-14 and 26 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251. See 37 CFR 1.175. The nature of the defect is set forth above.

37 CFR 1.175. Reissue oath or declaration.

(a) The reissue oath or declaration in addition to complying with the requirements of § 1.63, must also state that:

(1) The applicant believes the original patent to be wholly or partly inoperative or invalid by reason of a defective specification or drawing, or by reason of the patentee claiming more or less than the patentee had the right to claim in the patent, stating at least one error being relied upon as the basis for reissue; and

(2) *All errors being corrected in the reissue application up to the time of filing of the oath or declaration under this paragraph arose without any deceptive intention on the part of the applicant.*

(b)

(1) For any error corrected, which is not covered by the oath or declaration submitted under paragraph (a) of this section, applicant must submit a supplemental oath or declaration

stating that every such error arose without any deceptive intention on the part of the applicant. Any supplemental oath or declaration required by this paragraph must be submitted before allowance.

The error that was identified in the original declaration is no longer corrected, therefore, a proper error that has been correct under the reissue need to be identified.

Response to Arguments

Applicant's arguments filed June 2, 2010 have been fully considered but they are not persuasive.

Applicant submitted a proposed Declaration on September 7, 2010. Examiner suggested how the proposed amendment may be amended.

As indicated before according to MPEP 1414 [R-7] the Reissue Declaration should be as follows.

II. A STATEMENT OF AT LEAST ONE ERROR WHICH IS RELIED UPON TO SUPPORT THE REISSUE APPLICATION (I.E., THE BASIS FOR THE REISSUE).

(B) ... Where applicant specifies one such error, this requirement of a reissue oath /declaration is satisfied. Applicant may specify more than one error. Where more than one error is specified in the oath /declaration and some of the designated "errors " are found to not be "errors " under 35 U.S.C. 251, any remaining error which is an error under 35 U.S.C. 251 will still support the reissue. The "at least one error " which is relied upon to support the reissue application must be set forth in the oath /declaration. It is not necessary, however, to point out how (or when) the error arose or occurred. Further, it is not necessary to point out how (or when) the error was discovered. If an applicant chooses to point out these matters, the statements directed to these

matters will not be reviewed by the examiner, and the applicant should be so informed in the next Office action. All that is needed for the oath /declaration statement as to error is the identification of "at least one error " relied upon. In identifying the error, ***it is sufficient that the reissue oath /declaration identify a single word, phrase, or expression in the specification or in an original claim, and how it renders the original patent wholly or partly inoperative or invalid.*** The corresponding corrective action which has been taken to correct the original patent need not be identified in the oath /declaration. If the initial reissue oath /declaration "states at least one error " in the original patent, and, in addition, recites the specific corrective action taken in the reissue application, the oath /declaration would be considered acceptable, even though the corrective action statement is not required.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yehdega Retta whose telephone number is (571) 272-6723. The examiner can normally be reached on 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

YR
/Yehdega Retta/
Primary Examiner, Art Unit 3622